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IN THE
COURT OF APPEALS OF INDIANA

RONALD CHRISTOPHER PETTY a/k/a BRAD LEE PETTY,	)	
Appellant-Defendant,	)	
vs.	)	No. 12A04-0702-CR-117
STATE OF INDIANA,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLINTON CIRCUIT COURT
The Honorable Linley E. Pearson, Judge
Cause No. 12C01-0610-FC-249

September 10, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Ronald Christopher Petty, also known as "Brad Lee Petty," appeals the trial court's imposition of two four-year executed sentences, to be served concurrently, following his guilty pleas to robbery[1] and criminal confinement,[2] both Class C felonies. We affirm.

ISSUES

Petty has raised two issues for our review, which we restate as the following: (1) whether the trial court abused its discretion by considering Petty's criminal history when determining his sentence; and (2) whether the pre-sentence investigation report ("PSI") met the statutory requirements.

FACTS AND PROCEDURAL HISTORY

On September 28, 2006, Petty confined Christopher Smith to the backseat of a vehicle where he took $570 dollars from him. While confined, Smith felt frightened, intimidated, and scared for his safety. The State charged Petty with robbery, criminal confinement, and intimidation.

On October 2, 2006, Petty, identifying himself as "Brad Lee Petty" appeared before the trial court and pled guilty "straight up" to Class C felony robbery and Class C felony criminal confinement. The State responded by dismissing the intimidation charge. A sentencing hearing was scheduled for November 1, 2006, and the trial court ordered that a PSI be completed and submitted to the court prior to sentencing. Petty, however,

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[1] Ind. Code § 35-42-5-1(2).

[2] Ind. Code § 35-42-3-3(a)(1).

left town and failed to meet with the probation officer or to provide her with any relevant personal information. The probation officer completed the PSI with the available information and submitted it to the trial court on October 30, 2006. Petty failed to appear for sentencing on November 1, 2006, and the trial court issued a warrant for his arrest. On December 7, 2006, Petty appeared before the trial court and requested appointment of counsel. After complying with Petty's request, the trial court rescheduled the sentencing hearing for February 5, 2007.

At the February 5, 2007, sentencing hearing, the trial court gave Petty the opportunity to make any additions and/or corrections to the PSI that was submitted by the probation officer. Petty declined the opportunity to present any evidence before the court on his own behalf. In determining Petty's sentence, the trial court noted that it had allowed Petty to be released after he entered his guilty plea, upon which, Petty fled the state and again was arrested. Petty further failed to meet with his probation officer and appear for sentencing as ordered. The trial court also noted that Petty had lied to the court about his name, offering his brother's name instead of his own.[3] Further, the trial court noted Petty's criminal history, which included convictions for assault, cocaine possession, unlawful breaking into a vehicle, resisting law enforcement, operating a vehicle while intoxicated, and driving while suspended. The trial court also stated that

[3] At his initial hearing, Petty identified himself on the record as "Brad Lee Petty" and did not notify the court of his real name, Ron Christopher Petty, until questioned about his name at the February, 5, 2007 sentencing hearing. After learning of Petty's real name, the court amended the case file to ensure that sentencing was entered in Petty's correct name.

Petty had violated an earlier probation and was on bond for another offense when he committed the present crimes.

The court imposed the advisory sentence of four years for each count and ordered them served concurrently in the Department of Correction. The court noted it believed Petty's sentence to be "very lenient" given Petty's prior criminal history and his actions between the guilty plea and sentencing. Tr. at 30. Petty now appeals.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion when Determining the Length of Petty's Sentence

It is well settled in Indiana that a sentencing decision is within the sound discretion of the trial court and is reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). An abuse of discretion occurs if the trial court's decision is "'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" *Id.* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006) (internal quotation omitted)). The trial court may abuse its discretion . . . by entering a sentencing statement that includes reasons that are improper as a matter of law. *Anglemyer*, 868 N.E.2d at 490. Further, even if the trial court has abused its discretion, the error is harmless if the imposed sentence is appropriate. *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) *trans. pending*.

Indiana Code section 35-38-1-7.1(a)(2) (2006) provides that, "[i]n determining what sentence to impose for a crime, the court may consider . . . [whether or not] [t]he

person has a criminal history or delinquent behavior." In the instant matter, the trial court entered a sentencing order that included a statement outlining the court's findings supporting Petty's sentence. The trial court found the following:

> 1. The defendant was out on bond for a Clinton Superior Court charge when he committed the present offense.
> 2. The defendant has a prior criminal history, which includes, Assault, Robbery (dismissed), Possession of Cocaine, Unlawful [B]reaking into a Vehicle, Resisting Law Enforcement, Operating While Intoxicated, Driving While Suspended and the present offenses of Robbery and Criminal Confinement. The defendant has had prior executed jail and prison time as well as probation, which he had violated.
> 3. The defendant gave false information under oath when he pled guilty to the present offenses. The defendant stated his name as "Brad Petty" when in fact his name is Ron Christopher Petty.

Appellant's Appendix at 101. Petty argues that the trial court's sentencing statement includes reasons that are improper as a matter of law. We disagree.

Petty alleges that the trial court's findings improperly included various prior convictions. First, Petty claims that an assault charge from 1991 and a robbery charge from 2000 should not have been included in the findings because the charges were subsequently dismissed. The trial court acknowledged that the robbery charge had been dismissed, and it does not appear that the trial court considered this charge when imposing Petty's sentence. Additionally, Petty did not introduce any evidence to support the assertion that the trial court relied upon the dismissed 1991 assault charge rather than the 1990 assault charge for which Petty was convicted, and thus we need not consider his challenge to this charge further. Likewise, Petty alleged that some of his prior convictions may have been obtained without the assistance of counsel, but again, there is no evidence in the record to support this claim, and we will not consider it further.

Lastly, Petty argues that many of his prior convictions relate to driving offenses and thus should not have been considered by the trial court when imposing a sentence for the current offenses. In support, Petty relies upon *Woolery v. State*, 716 N.E.2d 919 (Ind. 1999), in which the Indiana Supreme Court held that a single prior conviction for misdemeanor operating a vehicle while intoxicated does not rise to the same level of significance when considered in sentencing for a murder conviction as it would in sentencing for a subsequent alcohol related offense. *Woolery*, 716 N.E.2d at 229. This case does not support Petty's contention that the trial court may not consider prior convictions for traffic or drug related offenses when imposing a sentence in the instant matter. The holding in *Woolery* relates to the significance attributed to the aggravating factors and does not hold that such prior convictions may not be considered in sentencing. *See Id*. Unlike the defendant in *Woolery*, Petty's criminal history is extensive, including convictions for cocaine possession, resisting law enforcement, and numerous driving offenses, all of which may properly be considered in sentencing by the trial court. We conclude that the trial court did not abuse its discretion in sentencing Petty, and therefore, we will not disturb the sentence imposed by the trial court on this ground.

II. The Acceptability of the PSI

Indiana Code section 35-38-1-8 (2006) requires that a PSI be prepared by a probation officer and be submitted to the trial court before sentencing a defendant

convicted of a felony.[4] However, the right to have a PSI considered prior to sentencing is a privilege granted by the legislature; it is not a right. *Woodcox v. State*, 591 N.E.2d 1019 (Ind. 1992), *abrogated on other grounds by Richardson v. State*, 717 N.E.2d 32 (Ind. 1999).

In *Woodcox*, the Defendant contended that he was improperly sentenced because, at the time of his sentencing, the trial court referred to an inadequate PSI.[5] *Id*. The Indiana Supreme Court agreed that the report was defective but, in holding that the burden was on the defendant to demonstrate how he was prejudiced by the omissions in the report, found no error because the defendant had not attempted to make a showing of prejudice. *Id*. The Court also noted that the defendant was given an opportunity to present evidence and make a statement prior to the judge's pronouncing sentence, which he declined to do. *Id*. Thus, the Court refused to reverse the defendant's sentence on the basis of an admittedly sparse report. *Id*.

In the instant matter, Petty argues that the PSI was deficient because personal information relating to his social and employment histories, family situation, economic status, as well as his education and personal habits, was not included. We need not consider whether the PSI was deficient, however, because Petty has failed to explain how

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[4] The PSI must contain information relating to the circumstances surrounding the commission of the offense, the defendant's family situation, his criminal, social, and employment history, as well as the impact of the crime upon the victim. Ind. Code § 35-38-1-9 (2006). A PSI may also include statements made by a victim to prosecutors and probation officers. Id.

[5] In *Woodcox*, the defendant argued that the pre-sentence report was deficient and did not comply with Indiana Code section 35-38-1-9(B)(2) in that the report contained identifying information concerning the defendant and a listing of juvenile and adult offenses, but it failed to fully address the social history of the defendant, his employment history, his family situation, his economic status, and his personal habits.

he was prejudiced by the alleged omissions from the report. Petty has failed to meet his burden under *Woodcox*. Ironically, Petty's alleged omissions can be directly attributed to Petty's failure to meet with the probation officer and provide this information as ordered by the court. Petty, like the defendant in *Woodcox*, was given ample opportunity to review the PSI prior to sentencing and to make any additions or corrections that he deemed necessary, and Petty declined to do so. Having found that the trial court did not abuse its discretion in sentencing Petty, and having rejected Petty's challenge to the PSI, we affirm the trial court's imposition of two concurrent four-year advisory terms.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.